

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

v.

EDMUND HATHAWAY

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C.A. No. M10-0020

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on February 23, 2011—Magistrate DiSandro (Chair, presiding), Magistrate Noonan, and Magistrate Goulart, sitting—is Edmund Hathaway’s (Appellant) appeal from a decision of the Warwick Municipal Court, sustaining the charged violation of G.L. 1956, § 31-14-2 “Prima facie limits.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On April 26, 2010, Officer Wyman of the Warwick Police Department (Officer Wyman) cited the Appellant for the aforementioned violation of the motor vehicle code. The matter proceeded to a trial in the Warwick Municipal Court, where the trial judge sustained the charge. Appellant appealed.

At trial Officer Wyman testified that at about 5:45 p.m. on April 26, 2010, he was on duty at a fixed radar post along Long Street in the City of Warwick. (Tr. at 1-2.) At that time, he observed a “bright colored Mazda traveling east[bound] on Long street, at a high rate of speed. . . .” (Tr at 3.) He then directed his radar gun at the vehicle which indicated that the Mazda was traveling 40 miles per hour. Id. Officer Wyman went on to testify that the radar unit he employed the night of April 26, 2010 had been calibrated

by a certified tuning fork and that he had ensured the radar's proper calibration just prior to the commencement of his shift on April 26, 2010. (Tr. at 5.) Lastly, on direct examination, the officer identified the Appellant as the driver of the Mazda, to whom he issued a citation pursuant to § 31-14-2.

On cross examination, Officer Wyman recalled that he was parked in a church parking lot located at 400 Long Street. (Tr. at 8.) He also testified that while he did not consider the road conditions to be wet, he "remember[ed] that it started to sprinkle [earlier that day]." Id.

After he completed his cross examination, Appellant presented his own argument to the Court. He was of the opinion that although the officer may have presented a prima facie case in regards to a numerical radar reading, this was not a proper instance to issue a citation for speeding. (Tr. at 10.) He pointed out that there were "no pedestrians in the area," and that "the conditions were fine." Id. Appellant testified that he was under the impression that the statute only applied to those drivers who operated their vehicles in an unsafe or reckless manner. Id. He also urged the trial judge to dismiss the charge because a violation would "raise [his insurance] premium." (Tr. at 11.)

At the conclusion of the trial, the judge, finding the testimony of Officer Wyman to be credible and uncontested, sustained the charge. Appellant aggrieved by this decision, filed an appeal before this Panel. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel

determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge’s decision was affected by an error of law and clearly erroneous in light of the lack of reliable, substantive and probative record evidence. We agree.

In State v. Sprague, 113 R.I. 351, 357 322 A.2d 36, 39-40 (1974), our Supreme Court held that a radar speed reading is admissible into evidence upon a showing that “the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method” and that there is “testimony setting forth [the officer’s] training and experience in the use of a radar unit.” Clear and convincing evidence of both prongs must be met in order to sustain a charge under § 31-14-2.

In the instant case, the City went to great lengths to provide clear and convincing evidence of the operational efficiency of the radar unit used by Officer Wyman. Not only did the officer testify that he personally checked the radar’s calibration, but the City submitted two certificates into evidence: one for the radar unit and another certifying the tuning fork. However, the City failed to present any evidence that Officer Wyman had any training or experience in the use of radar equipment. Because the City failed to meet the second prong of the Sprague test, we conclude that the trial judge erred when he sustained the charge under § 31-14-2.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision is clearly erroneous in light of the reliable, probative, and substantial record evidence and affected by error of law. Substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

DATE: 4/4/11